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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/710,288

11/10/2000

Barry M. Thompson

6338.10

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25763 7590 04/10/2002

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EXAMINER

TRUONG, LINH T

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/710,288	THOMPSON ET AL.	
	Examiner	Art Unit	
	Linh Truong	3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-8, 10-17, 19-24, and 26-27 is/are rejected.
- 7) ☒ Claim(s) 6, 9, 18 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>1</u> . | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Drawings***

1. This application, filed under former 37 CFR 1.60, lacks formal drawings. The informal drawings filed in this application are acceptable for examination purposes. When the application is allowed, applicant will be required to submit new formal drawings. In unusual circumstances, the formal drawings from the abandoned parent application may be transferred by the grant of a petition under 37 CFR 1.182.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 3-5, 17, and 24 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear as to what the word "manifold" means. Applicant has used "manifold" in many different ways throughout the specification: 1.) "a manifold port or handle" (page 20, line 8), 2.) "connection on manifold or nozzle" (page 20, line 16), and 3.) "manifolds 130" (page 24, line 15). For examination purposes, "manifold 130" will be used.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,10-12, and 21 are rejected under 35 U.S.C. 102(b) as being unpatentable by Schultz et al. '4,921,492.

6. For claim 1, Schultz teaches an evacuation apparatus comprising a plenum (30) coupled to a vacuum and a fluid source and a plenum support (48) (figure2) (column 1, lines 52-54)..

7. For claim 10, Schultz teaches a plenum with a bottom wall that includes an adhesive layer for adhesive attachment of the head around a surgical site (column 1, lines 61-63).

8. For claims 11-12, Schultz teaches a plenum constructed of non-porous material (column 2, lines 37-39) and a plenum support constructed of a porous material (column 1, line 58).

9. For claim 21, Schultz teaches a method for removing fumes from a surgery site comprising: 1.) providing the surgery site, 2.) providing a head defining a plenum with a plenum support, 3.) providing a vacuum source, 4.) coupling head to a vacuum source, 5.) and actuating vacuum source to remove fumes from the surgery site (column 1, lines 46-60).

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

11. Claims 14,15, and 19-20 are rejected under 35 U.S.C. 102(e) as being unpatentable by Yeh et al. 5,868,722.

12. For claims 14-15, Yeh teaches a medical appliance with a working head (14) positioned next to a surgical site and operably coupled to a vacuum source and a source of clean air (column 3, lines 9-13 and column 3 lines 28-32). The air flow is laminar (column 4, line 8).

13. For claim 19, Yeh teaches that the working head contains air flow when actuation of the vacuum source occurs.

14. For claim 20, Yeh teaches that at least one inlet (14) and at least one outlet (18) are on opposite sides of the working head (column 3, lines 9-19).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable by Yeh et al.

5,868,722 in view of Schultz et al. '4,921,492.

17. For claim 16, Yeh et al. does not teach a working head defining a plenum having at least one central opening with an open facing adjacent to an inner periphery of the central opening of the plenum. Yeh et al. teaches this (figure 1). Therefore, it is obvious to one with ordinary skill in the art to combine the inventions of Schultz et al. and Yeh et al. in order to produce and evacuation apparatus with a working head defining a plenum for more efficient smoke evacuation.

18. Claims 2,7,8,13, 22-23, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable by Schultz et al. '4,921,492 in view of Yeh et al. '5,686,722.

19. For claim 2, Schultz et al. does not teach that the evacuation apparatus has one nozzle connected to a fluid source and another nozzle connected to a vacuum source with two of the respective nozzles on opposite sides. Yeh et al. teaches that nozzle 14 is connected to a fluid source (column 3, lines 9-11) and that nozzle 20 is connected to a source of vacuum (column 3, lines 28-31) and they are on opposing sides (figure 1). Therefore, it is obvious to one with ordinary skill in the art to combine the inventions of Schultz et al. and Yeh et al. to produce an evacuation apparatus with two separate connections to a fluid source and a vacuum source for more efficient smoke evacuation from a surgical site.

20. For claims 7, 8, and 27, Schultz et al. does not teach a particulate-free laminar flow of air. Yeh et al, however, teaches a particulate-free laminar flow of air (column 4, lines 8-10). Therefore, it is obvious to one with ordinary skill in the art to combine the inventions of Schultz et al. and Yeh et al. to produce an evacuation apparatus with a particulate-free laminar flow of air for a sterile and more efficient smoke evacuation from a surgical site.

21. For claims 13 and 26, Schultz et al. does not teach a fluid source that supplies an inert gas. Yeh et al. teaches a fluid source that can supply "...nitrogen, carbon dioxide, and like gases..." (column 2, lines 43-45). Therefore, it is obvious to one with ordinary skill in the art to provide the invention of Schultz et al. with a fluid source of inert gas for a different way of evacuating smoke from a surgical site.

22. For claims 22 and 23, Schultz et al. does not teach operably connecting the working head to a fluid source and actuating the fluid source. Yeh et al. however teaches this (column 3, lines 9-13). Therefore, it is obvious to one with ordinary skill in the art to provide the invention of Schultz et al. with operably connecting the working head to a fluid source and actuating the fluid source for more efficient smoke evacuation from a surgical site.

***Allowable Subject Matter***

23. Claims 6,9, 18 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Art Unit: 3761

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***Conclusion***

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is (703) 605-4974. The examiner can be normally reached on Monday through Friday from 8:00 AM-5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached at 703-308-2702.

Linh Truong

*L.T.*

